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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1385

REGINOLD HUTCHERSON, et al., *Appellants,*

vs.

LAURIE LEHTIN, et al., *Appellees.*

Appellants' Reply Brief

On Appeal from the United States District Court for the Northern District of California

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Appellants in this brief reply to the contentions raised by the appellees in their motion to dismiss or affirm. Appellants' principal contentions in support of the jurisdiction of this Court and in support of the importance and substantially of the questions raised in this appeal are contained in their jurisdictional statement. The Court is respectfully referred to the jurisdictional statement for appellants' argument in this regard.

ARGUMENT

I. The case is not moot.

A. THE APPELLANTS HAVE NOT ABANDONED THEIR RIGHTS.

Appellees contend that the appellants have abandoned their rights and that the case is therefore moot. This contention is demonstrably incorrect.

Appellants have not voluntarily abandoned their dwellings. Although the appellants have now been evicted, in each case they did so only because a five-day notice had been issued by the Sheriff pursuant to C.C.P. § 1174[1] and eviction was imminent.[2] Some of the appellants were forced to move because of the uncertainty that a restraining order would be issued by the U.S. District Court restraining the Sheriff from evicting them. The other appellants moved only after the restraining order of the U.S. District Court was later dissolved. In each case the appellants relinquished their dwellings pursuant to a direct order of the Sheriff. This can hardly be considered a "voluntary" abandonment.

More importantly, this action is not moot because the appellants also seek injunctive relief against enforcement of the money judgments entered against them in the unlawful detainer proceedings. The complaint in the district court action clearly calls for such relief. There is nothing to indicate that the injunctive relief is moot with respect to this issue.

1 "C.C.P." refers to the California Code of Civil Procedure.

2 Appellees' statement that "no steps have ever been taken" to enforce the unlawful detainer judgments, (appellees' motion P. 4) is not correct. The appellees caused writs of execution to be issued, costs to be advanced to the Sheriff and five-day notices to be served on appellants pursuant to C.C.P. § 1174. The appellees have garnished the bank account of two appellants and have threatened other appellants with garnishment.

B. THE DECLARATORY RELIEF IS NOT MOOT.

The declaratory relief sought by the appellants on behalf of themselves and the class is properly before this Court. This issue is not moot.

Appellees contend that this is not a class action. However, this contention ignores the first five words of the district court opinion: "This is a class action . . ." This ruling is part of an order issued by the three-judge district court at its first sitting to hear appellants' motion for a preliminary injunction. Hence, the determination that this is a class action was made "as soon as practicable after the commencement of an action." Rule 23(c)(1). Moreover, it cannot be argued that appellees were in any way prejudiced by the failure of the court to make this determination prior to the hearing on appellants' motion. Appellants' motion was for a preliminary injunction that would only affect the named plaintiffs.[3] No relief on behalf of the class was sought at the hearing. Hence, the appellees could not have been prejudiced by the fact that the determination of a class action was made simultaneously—rather than prior to—the ruling of the court denying appellants' motion and granting summary judgment to the appellees.

The declaratory relief sought is in no way moot. There has been no acquiescence by the appellees, no change in the law, etc. that would end the continuing nature of the controversy. Appellees candidly concede that the California unlawful detainer law continues to exclude affirmative de-

3 There was no motion to dismiss by the appellees before the district court at that time. Both the appellees' brief (p. 4) and the district court opinion (Juris. St., Appendix A 10) are wrong in this regard. Appellees only filed a "suggestion that the Court lacked jurisdiction." No motion or notice of motion was filed. Hence, both the determination of the class and the granting of summary judgment were done on the court's own motion.

fenses and counterclaims from the hearing provided under the law.[4] In point of fact the district court has granted declaratory relief in this action. This declaratory relief incorrectly states that the California unlawful detainer law "is valid and constitutional as against the contrary claims of plaintiffs . . ."[5] This opinion will continue to stand until reversed by this Court.[6]

II. Jurisdiction is not lacking.

A. THIS COURT HAS JURISDICTION ON APPEAL.

Appellees contend that this Court lacks jurisdiction on appeal, and they base their argument on *Goldstein v. Cox*, 396 U.S. 471 (1970). However, *Goldstein* is totally different from this case. In *Goldstein*, the appellants appealed from the *denial* of a motion for summary judgment. This Court held that such denial did not constitute the denial of injunctive relief. Implicit in that decision was the assumption that the appellants could still seek the injunctive relief prayed for in the district court. If such relief was denied, they were not precluded from direct appeal to this Court. In this case, however, the appellants seek to appeal the *granting* of a motion for summary judgment. Clearly, the granting of such a motion is a final judgment that precludes further proceedings in the district court. Summary judgment in this instance constitutes an order denying injunctive

4. Appellees' motion, p. 5.

There can be little doubt that this is a correct statement of California law. This is borne out by a recent case, *Union Oil Co. v. Chandler*, 4 Cal. App. 3d 716, __ Cal. Rptr. __ (Hearing denied by California Supreme Court, April 22, 1970).

5. Juris St., Appendix A 12.

6. If the appellees were correct in their contention that the action was moot, a motion to affirm or dismiss would not be proper. The granting of such a motion would merely leave standing an incorrect declaration of the law. This incorrect statement of the law should be disposed of by remanding it for a correct decision.

relief, and it is therefore appealable to this Court. Title 28 U.S.C. § 1253.

Since the denial of injunctive relief is appealable to this Court, the appeal from an adverse decision on declaratory relief is also properly before this Court as part of the same appeal. *Zemel v. Rusk*, 381 U.S. 1; *United States v. Georgia Public Service Commission*, 371 U.S. 285; *Paul v. United States*, 371 U.S. 245.

B. THE DISTRICT COURT HAD JURISDICTION IN THE MATTER.

The appellees claim that the district court lacked jurisdiction, and they base their contention on *Rooker v. Fidelity Trust Co.*, 263 U.S. 413; *Angel v. Bullington*, 330 U.S. 183; and *England v. Medical Examiners*, 375 U.S. 411. These cases are totally inapplicable to the case at hand.

In *Rooker*, the plaintiffs sought a bill in equity to overturn a state judgment that allegedly involved judicial misconduct. That case differed from the present case in at least four significant respects:

1. *Rooker* was concerned with isolated misconduct by one judge. This case concerns a denial of due process and a denial of equal protection growing out of a uniform application of a state law on a statewide basis.

2. *Rooker* involved a relitigation of the same case that had previously been heard by all of the state appellate courts and that had been previously disposed of on appeal by this Court. This case involves issues of procedural due process and a denial of equal protection of the laws that were not previously litigated.[7]

[7] Appellees' contention that these issues were raised in the California criminal detainer proceedings is clearly wrong. The issues that appellees refer to (Appellees' motion, p. 8, fn. 7) were substantive affirmative defenses based on constitutional grounds, i.e., racial discrimination in providing maintenance services to the

3. *Rooker* involved the same parties as in the previous state action. This case involves more than the original parties to the unlawful detainer actions. On one side of the dispute is the class of low-income tenants of substandard dwellings; on the other is the Sheriff and certain judicial officers. None of these persons was a party to the state court proceedings. The addition of these parties is not incidental: the central issue in this case is that the denial of a fair hearing under the California unlawful detainer law denies due process of law and equal protection of the laws to appellants *as a class*. In evaluating appellants' claims, the facts relating to the class must be considered.[8]

4. In *Rooker*, the plaintiffs' claims were fully reviewed on appeal under a procedure that protected their rights pending such appeal. No such appellate procedure was available to the appellants in this case. In each case the appellants who were parties to the California unlawful detainer proceedings sought stays of execution pending an appeal. In each case they were denied by the trial judge. Under the special appellate rules of the California unlawful detainer law no other court could thereafter grant a stay of execution pend-

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apartment (ninth affirmative defense) and denial of right to petition government for redress of grievances (twelfth affirmative defense). These issues can in no way be equated with the constitutional claim in this action that the *procedure* under California unlawful detainer law constitutes the denial of a fair hearing. This is a new claim that was in no way litigated in the state courts.

[8] See Juris St., p. 5-7, 9, 16-23.

Appellees' contention that there are no issues of fact is without merit. The factual issues pertaining to the class were never presented to the district court because that court granted summary judgment on its own motion prior to a trial on these issues.

ing an appeal.[9] Thus, if the appellants had elected to seek review of their constitutional claims through the state courts, they would have been forced to abandon the rights they were seeking to protect. When constitutional claims are at issue, the litigant cannot be compelled to abandon the rights he seeks to protect prior to invoking the jurisdiction of the federal courts.[10]

Angel v. Bullington, supra, is no closer to the point. In *Angel*, the plaintiffs attempted to litigate the exact same suit in the federal courts as had previously been litigated in the state courts. There was no claim that the state appellate review procedures could not, and did not, protect the plaintiffs' rights on appeal.[11]

England v. Medical Examiners refutes the point that appellees have attempted to raise. The Court clearly states that "[T]he right of a party plaintiff to choose a federal court where there is a choice cannot be denied." The Court then states that if a party "freely and without reservation" submits his federal claims for decision in the state court, "litigates them there, and has them decided there" he cannot relitigate the matter in the federal courts. It can hardly be contended that the named appellants, who were *defendants* in the state unlawful detainer proceedings, freely submitted to state court adjudication the constitutional issues raised in this class action.

9. C.C.P. § 1176; *Mendoza v. Small Claims Court of Los Angeles Judicial District*, 49 Cal.2d 668, 321 P.2d 9 (1958) (and cases cited therein).

10. *Dombrowski v. Pfister*, 380 U.S. 479.

11. The constitutional questions in *Angel* were not substantial. This is borne out by the fact that federal jurisdiction in that case was founded not on the civil rights statute but on diversity jurisdiction.

The remaining cases cited by appellees are routine applications of the *Rooker* doctrine. None of them supports the contention that jurisdiction was lacking in the district court.[6]

III. The constitutional questions are substantial.

Appellants do not believe that appellees have raised any points concerning the merits of their claims that have not been fully refuted in appellants' jurisdictional statement. The Court is respectfully referred to the jurisdictional statement for those arguments.

One point, however, warrants comment. Appellees cite *Jordan v. Talbot*, 55 Cal.2d 597, 361 P.2d 488 (1961) as supportive of their position. The thrust of their argument seems to be that if tenants obtain a fair hearing in unlawful detainer proceedings landlords will commit acts of "blood, sweat, violence and breaches of the peace" to recover the leased premises. Appellants are not contemplating that landlords are prone to violence, and it seems surprising that the appellees should do so. In any event, this hardly seems a proper justification for denying a fair hearing to appellants and other low income tenants of subsidized housing.

[illegible] appellees make [illegible] considerations that the district court lacked jurisdiction [illegible] to affirm or dismiss would be proper. The district court has entered declaratory relief [illegible] appellants [illegible] Appellees suggested relief would have [illegible] in effect to [illegible] a case, the proper relief would be to remand the matter to the district court for proceedings consistent with its jurisdiction.

CONCLUSION

Appellants urge this Court to take precautions [illegible] and the matter for further hearing.

Dated: May 7, 1970

Respectfully submitted,

[illegible]

[illegible]

[illegible]

[illegible]